

EX PARTE OR LATE FILED

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5 February 1999

Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals, 445 Twelfth Street, SW
Washington, DC 20554

Re: Ex Parte Filing, CC Docket No. 96-115

Dear Ms. Salas:

The Association of Directory Publishers ("ADP") hereby responds to the 14 January 1999 ex parte filing of United States Telephone Association ("USTA"). USTA states that the FCC should not prescribe a rate or set a rate ceiling for local exchange carrier ("LEC") provision of subscriber list information ("SLI"). Instead, USTA urges the FCC to adopt a "market-based" rate. However, for the reasons set forth below, a market-based rate is inconsistent with the "reasonable" rate requirement of Section 222(e). Instead, the Commission should adopt rules defining a reasonable rate, preferably through establishment of a benchmark, as urged by ADP and the U.S. Small Business Administration, Office of Advocacy ("SBA").¹ The benchmark suggested by ADP and SBA is four cents (\$0.04) per listing or listing update.

It is impossible to adopt a "market-based" rate for SLI because no "market" for SLI exists. Each LEC is a monopoly provider of SLI for its subscribers; hence, no market for SLI exists. Indeed, the U.S. Copyright Office has recognized that SLI is a "prototypical example[]" of "sole source" data.² Further, the New York Public Service Commission ("NY PSC") has recognized that "directory

¹ See ADP and SBA Ex Partes in CC Docket No. 96-115 (filed Sept. 17, 1999).

² See U.S. Copyright Office, Report on Legal Protection for Databases, at 102 (August 1997), attached hereto as Exhibit A.

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databases are controlled by LECs because of their monopoly status."³

Where a competitor controls an essential input, cost-based pricing is appropriate. Cost-based pricing is the standard the FCC has adopted in a broad range of rules on price, particularly in situations involving monopoly control over facilities or data. This approach has just been validated by the Supreme Court.⁴ In the absence of rules defining a reasonable price, LECs are able to declare excessive "market-based" rates reasonable and block competition in directory advertising, thereby enabling their directory publishing affiliates to extract supracompetitive profits from consumers.

It costs major LECs such as BellSouth less than one cent per listing to maintain their SLI databases. USTA states that "reasonable" rates "widely vary among LECs." However, the price differences USTA cites are, in reality, evidence of monopolistic price discrimination, since none of these prices have any apparent relationship to cost differences.⁵ Based on available cost data, it is likely that it costs less than one cent per listing to provide

³ See Order Resolving Petitions For Rehearing and Clarification of July 22, 1998 Order Regarding Directory Database Issues and Directing Refiling of Tariffs, Case No. 94-C-0095, at 13 (New York Pub. Serv. Comm'n Jan. 7, 1999), attached hereto as Exhibit B.

⁴ See AT&T Corp. v. Iowa Utilities Board, 1999 WL 24568 (U.S.), at *8 (Jan. 25, 1999).

⁵ By way of illustration, USTA provides a copy of Roseville Telephone Company's California tariff providing for provision of SLI at a rate of \$0.52 per listing. It should be noted that the Roseville tariff is still subject to an ongoing California Public Utilities Commission proceeding in its local competition proceeding.

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SLI.⁶ Moreover, LECs do not create or maintain SLI solely or even primarily for directory production. Its basic component -- a database of names, addresses, and telephone numbers of subscribers to the LEC's telephone service -- would have to be maintained by the LEC regardless of whether anyone else published directories, because such data are essential to installing, providing, and billing for telephone service. The telephone companies' long-standing practice of bundling a "free" yellow pages classified listing in the LEC's "official" directory with business telephone service makes the maintenance of business classification listings essential to the provision of regulated telephone service. Consequently, use of these data is an incremental activity that imposes no cost on the LEC beyond the LEC's actual cost to extract and transmit these data to the independent publisher.

LECs who charge between three and four cents per listing are able to recoup their costs, plus a substantial profit. Most of the larger LECs charge much less than the isolated examples chosen by Cincinnati Bell to demonstrate price variations. For example, in BellSouth's territory, the tariff rate is four cents (\$0.04) per listing.⁷ This price covers its costs plus profit. In addition, the NY PSC recently ordered Bell Atlantic to file directory listings database service tariffs in which all rates are set at incremental cost. Bell Atlantic's tariff establishes a \$0.0305 rate per directory listing.⁸ This

⁶ See, e.g., BellSouth Cost Study (Feb. 8, 1993), submitted as Attachment 1 to ADP Ex Parte in CC Docket No. 96-115 (filed Feb. 24, 1997)

⁷ This is the rate for initial listings for use in a single edition of a printed directory. By citing this rate, ADP does not concede that BellSouth's rates for updates or multiple edition directories are reasonable. See ADP Ex Parte in CC Docket No. 96-115 (filed Dec. 11, 1998).

⁸ See Proposed Tariff Revisions to Tariff PSC Nos. 900 and 916, submitted by Bell Atlantic on Jan. 19, 1999, attached hereto as Exhibit C.

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rate is even lower than the four cent benchmark proposed by ADP and SBA.

Commission guidance is required for Section 222(e) to be fully effective. USTA states that adopting a price ceiling would create a "substantial likelihood of conflict between some state commissions and the FCC." Nothing in the record of this proceeding even suggests such a problem, and, in any event, the FCC has ultimate oversight authority for Section 222(e) and must set guidelines to ensure that inconsistent state regulations do not frustrate federal objectives.⁹

The ADP/SBA proposal addresses all of USTA's concerns. USTA states that because "cost elements" vary among LECs, a price ceiling is inappropriate. The proposal submitted by ADP and SBA addresses this concern. ADP and SBA urged the Commission to adopt a four cent benchmark. Under the proposed rules, any LEC that believes four cents is too low to cover its costs would be permitted to seek a waiver upon demonstration of its costs. Moreover, an exemption would be granted to rural telecommunications carriers, as defined in Section 3(37) of the Communications Act.¹⁰

The Section 208 complaint process is inadequate to resolve price disputes. USTA suggests that potentially unreasonable rates for SLI should be resolved through the Section 208 complaint process. However, an FCC complaint only addresses the facts of a single case and could take months to resolve. Forcing independent publishers, many of whom are small businesses, to fight the same issues over and over again would surely frustrate Congress' intention to enhance the ability of these publishers to compete with LEC-affiliated directory publishers.

The Commission must ensure that SLI is provided on an "unbundled" basis. USTA mischaracterizes the requirement of Section 222(e) that SLI be provided on an "unbundled" basis. Many LECs attempt to impose on independent publishers artificial restrictions ostensibly driven by a desire for symmetry with the procedures in place to

⁹ See AT&T Corp. v. Iowa Utilities Board, 1999 WL 24568 (U.S.), at *7 (Jan. 25, 1999).

¹⁰ 47 U.S.C. § 153(37).

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generate SLI for the LECs' directory-publishing affiliates. The sophisticated computer systems used by most LECs can readily provide, at no appreciable increase in cost, SLI offerings that meet the requirements of the area wide and neighborhood directories often published by independent publishers. To the extent that the LECs can feasibly provide SLI that is sorted according to the specific needs of independent publishers, Section 222(e) requires that they do so. Otherwise, LEC-affiliated directory publishers will effectively control the content, scope, and publication dates of their competitors' directories.

Pursuant to the Commission's rules, two (2) copies of this letter are being filed. Please call the undersigned at (202) 429-4730 if you have any questions regarding this filing.

Sincerely,



Sophie J. Keefer

CC: William E. Kennard, Chairman
Susan Ness, Commissioner
Harold Furchtgott-Roth, Commissioner
Michael K. Powell, Commissioner
Gloria Tristani, Commissioner
Lawrence E. Strickling, Chief, Common Carrier Bureau

Report on
Legal Protection for
Databases

U.S. Copyright Office
August 1997

A Report of the Register of Copyrights

and commercial harm, rather than on the nature of the material taken. Protection could exist for as long as an investment of continued value was being taken unfairly.²⁶³

G. Sole Source Data

In theory, the answer to many of the concerns that have been expressed about restricting the availability of data is that, regardless of what model of protection is chosen, the database producer would not own the data in itself. The producer's rights would extend to its own particular database as an entity, but not the items collected in the database. In other words, anyone would remain free to obtain all of the same data from other sources. Thus, the legal protection would ensure that the database maker could protect the fruits of its investment in collecting and presenting data, but would leave others able to make their own collection of the same data. No participant at the meetings expressed disagreement with the concept of such a limitation, which could be explicitly stated in any legislation.²⁶⁴

Nevertheless, there are circumstances in which this answer alone may be unsatisfactory. When the data is not available elsewhere, the ability to prevent its extraction from the database may in effect amount to ownership of the data itself. The two prototypical examples of "sole source" data contained in a database are (1) government data provided to a private producer on an exclusive basis; and (2) data generated by the database maker itself. Included in the latter category are telephone subscriber information, sports statistics, and trading data from financial

²⁶³ A comparison might be drawn to another branch of unfair competition, trademark law, under which rights exist as long as a mark continues to be used in commerce and to have value in identifying the source of the goods or services. *See* 15 U.S.C. §§ 1051, 1059 (Lanham Act §§ 1, 9).

²⁶⁴ *Cf.* H.R. 3531 § 5(b) ("[N]othing in this Act shall in any way restrict any person from independently collecting, assembling or compiling works, data or materials from sources other than a database subject to this Act"); defense of "independent creation" in copyright law. *See, e.g.,* *Mazer v. Stein*, 347 U.S. 201, 218 (1954) ("Absent copying there can be no infringement of copyright").

markets.²⁶⁵ Unless the producer chooses to make such data freely available, it is simply not possible for anyone else to obtain it independently.²⁶⁶

This is a complex issue, involving diverse types of databases and touching on a wide variety of policy implications. We present here some general points raised in the meetings as a preliminary stage in the analysis.

A variety of mechanisms have been proposed to deal with sole source databases. Broadly categorized, they are: exclusions from protection; compulsory licenses; and regulation through other bodies of law such as antitrust or industry-specific government oversight. A combination of these approaches could also be considered, allowing greater fine-tuning to the nature of the database and its market.

A complete exclusion from protection is the most drastic approach, as it will result in a loss of the legal incentive to produce the database in question. This approach therefore implies a policy decision not to provide such an incentive for that type of database, and the absence of suitable, less drastic alternatives to ensure the availability of data.

The least controversial case for an exclusion from protection is the category of government data made available to the database producer on an exclusive basis. This issue implicates general U.S. policies about the conditions on which government data is made

²⁶⁵ Other examples mentioned in the meetings included situations where the database producer may be the only entity in possession of the underlying information, for example where the original source no longer exists or has not retained the information; and situations where information may be available elsewhere but not in the "official" form demanded by users, such as sports league statistics or legal citations. *Cf.* H.R. 1584 and H.R. 1822, 104th Cong., 1st Sess. (1995) (barring, under certain circumstances, Federal and State courts and agencies from requiring a single citation form in which copyright subsists).

²⁶⁶ We do not suggest that all of the examples given should be treated in the same way. Different types of sole source data may raise different considerations, particularly with regard to the degree of justification for protection and the degree of need for access. Sports statistics in particular may be available as a practical matter through a variety of sources because the games are widely disseminated by television and radio broadcasts. *See, e.g.,* *NBA v. Motorola, Inc.*, 105 F.3d (2d Cir. 1997) (scores obtained by defendant from television and radio).

available to the public. Under current law, federal agencies are generally prohibited from entering into exclusive or restricted agreements for distribution of public information "that interferes with [its] timely and equitable availability to the public."²⁶⁷ Nevertheless, the statute contains some exceptions, and other countries have different rules. The policy favoring free access to government data could be undermined if a single entity were permitted to control access through its database, with the public unable to obtain the data directly from the government or any third-party provider.²⁶⁸ This result could be avoided by broadening any statutory exclusion of databases created by a government entity to encompass databases created from government data that has been made available on exclusive terms to the database producer.²⁶⁹

The compulsory license approach may be seen as a middle ground, allowing producers to benefit financially from the use of their products but removing their ability to control the nature or price of the use. As discussed above, however, compulsory licenses are generally disfavored in intellectual property law, and adopted only as a last resort in circumstances where the free market does not function well. The idea of a compulsory license for sole source databases was proposed in Europe in the initial stages of the database directive, but abandoned as part of an overall compromise when it proved controversial.²⁷⁰

²⁶⁷ 44 U.S.C. § 3506(d)(4).

²⁶⁸ Under current law the data usually remains available from the government, but without the added value provided by the private sector producer. Government contracts for the publication of information generally require a continued non-exclusive license for the government to use the information and make it available to others, and may also require the producer to provide the information to the government in a more accessible form (e.g., automated). For example, the catalogue entries for copyright registrations from 1978 to date are available on-line through the Library of Congress. Those records are also available in a more accessible, user-friendly form from DIALOG Information Services, Inc., which provides a powerful search engine to its users.

²⁶⁹ The related issue of how to treat arrangements that are exclusive not as a legal matter but *de facto* is discussed below.

²⁷⁰ See discussion *supra* section IV.B.

The third possibility is to deal with this issue as a question of appropriate government control of business activities. This could be done through the application of antitrust law generally, or through regulation of a particular industry, such as through the Federal Communications Commission for the telecommunications industry or through the Securities Exchange Commission for securities markets. These are areas where Congress has determined that a regulatory scheme is advisable in order to balance the interests of the industries and the public.

An example of the antitrust approach is the *Magill* decision in the European Court of Justice, which held that television broadcasters could not rely on their compilation copyrights to prevent the copying of self-generated programming information by others wishing to publish competing television program guides.²⁷¹ Reliance on such competition law represents the route taken, at least at present, by the European Union.²⁷²

As to telephone subscriber information, Congress has already acted to ensure that this information is accessible to others. The Telecommunications Act of 1996 requires telecommunications carriers to provide non-discriminatory access to telephone numbers and directory listings.²⁷³ A number of participants in the Copyright Office meetings urged that this legislative compromise not be reversed or undermined by any new database legislation. One

²⁷¹ *Radio Telefis Eireann v. European Commission*, Court of Justice of the European Communities [1995] All ER 416, [1995] FSR 530 (April 6, 1995). Similar antitrust claims have been made by defendants in copyright infringement cases in the United States, with mixed success. The defendant in *Feist*, for example, successfully asserted an antitrust counterclaim in the district court. *Rural Tel. Serv. Co. v. Feist Publications, Inc.*, 737 F. Supp. 610 (D. Kan. 1990). That judgment was overturned on appeal. 957 F.2d 765 (10th Cir. 1992).

²⁷² See *supra*, section IV.B.

²⁷³ Telecommunications Act of 1996, Pub. L. No. 104-104, § 222(e), 110 Stat. 56, 61, 62 (1996) (codified at 47 U.S.C. § 222(e)).

way to address their concern would be an explicit safeguard clause stating that nothing in the legislation affects that provision of the Telecommunications Act.²⁷⁴

Sports statistics, including the scores of individual games, is a topic that has elicited a great deal of concern, as well as litigation. Specifically, the view has been expressed that sports leagues and teams should not be able to prevent others from reporting on and communicating these facts. Those expressing this view include newspapers, broadcasters and consumers as well as those in the business of compiling and marketing such information. Stock exchange trading information presents similar issues. It may be important for news organizations or financial analysts to be able to report and transmit information about current stock prices, available only through the services of the particular exchange.

For both of these examples, the timeliness of the data is likely to be critical, given the audiences for information as the game is played, or for prices for immediate purchase. Another variable is the extent to which others have a legitimate need to extract more than an insubstantial amount of such information—i.e., not just trading prices of particular stocks, or the outcome of the third inning of a game.

Finally, arguments have been made for special treatment of databases which are not literally sole sources, but may be the only economically feasible sources of particular data. While others can in theory independently obtain the data elsewhere, doing so is prohibitively expensive or economically wasteful. This may be the case where the data requires substantial time and effort to obtain or the database has a narrow niche market (such as a small scientific subspecialty), and no other producer has the resources or ability meaningfully to compete with a first comer. The greatest area of concern expressed is the database produced by a single producer

²⁷⁴ Cf. H.R. 3531, § 9(c) ("Nothing in this Act shall prejudice provisions concerning copyright, rights related to copyright or any other rights or obligations in the database or its contents, including laws in respect of patent, trademark, design rights, antitrust or competition, trade secrets, data protection and privacy, access to public documents, and the law of contract").

from government data, where the data is not made available by the government in usable form. Although federal agencies are prohibited from awarding exclusive contracts for this purpose, in many cases the reality may be that only one producer enters into a contract for a particular set of data.

Such databases appear to present somewhat different policy questions than literally sole source databases. On the one hand, there is a public interest in easier, cheaper access to data for users. On the other hand, presumably in these circumstances the database producer has had to make a proportionally higher investment to obtain the data, or take greater risks. It may be that the markets for such databases cannot support more than one producer. It is unclear whether granting new legal protection will change these circumstances, either exacerbating a lack of competition or encouraging more.

On the sole source issue too, the form and scope of any new protection may be key. Within the context of an unfair competition model, the use of such a database for non-competitive purposes may be permissible. Moreover, the misappropriation doctrine could allow distinctions based on the "hotness" of the data, giving its producer some lead time in exploiting the market, but then making the data available for third-party use. If one adopts a property rights model instead, the question will be the scope of the rights and how any exceptions are drawn.

H. Constitutionality

One other set of issues requires consideration, although they were not discussed in depth at the Copyright Office meetings: the constitutional implications of any new legislation in this area. Two primary issues have been identified: (1) possible constraints imposed on Congressional power to legislate in this area by the language of the Copyright Clause;²⁷⁵ and (2)

²⁷⁵ U.S. CONST., art. I, sec. 8, cl. 8 (authorizing Congress to grant copyrights and patents by giving it the power "to promote the Progress of Science and Useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.") [hereinafter, the

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Exhibit B

At a session of the Public Service
Commission held in the City of
Albany on November 24, 1998

COMMISSIONERS PRESENT:

Maureen O. Helmer, Chairman
John B. Daly
Thomas J. Dunleavy
James D. Bennett

- CASE 94-C-0095 - Proceeding on Motion of the Commission to Examine Issues Related to the Continuing Provision of Universal Service and to Develop a Regulatory Framework for the Transition to Competition in the Local Exchange Market.
- CASE 95-C-0657 - Joint Complaint of AT&T Communications of New York, Inc., MCI Telecommunications Corporation, WorldCom Inc. d/b/a LDDS WorldCom and the Empire Association of Long Distance Telephone Companies, Inc., Against New York Telephone Company Concerning Wholesale Provisioning of Local Exchange Service by New York Telephone Company and Sections of New York Telephone's Tariff No. 900.
- CASE 91-C-1174 - Proceeding on Motion of the Commission Regarding Comparably Efficient Interconnection Arrangements for Reconsideration and Business Links.
- CASE 96-C-0036 - Complaint of AT&T Communications of New York, Inc., Against New York Telephone Company Concerning AT&T's Request for collocated "cages" to be provided by New York Telephone Pursuant to its Optical Transport Interconnection Service II ("OTIS-II") Tariff.
- CASE 90-C-0075 - Proceeding on Motion of the Commission to Review Issues Concerning Privacy in Telecommunications.

ORDER RESOLVING PETITIONS FOR REHEARING
AND CLARIFICATION OF JULY 22, 1998
ORDER REGARDING DIRECTORY DATABASE ISSUES
AND DIRECTING REILING OF TARIFFS.

(Issued and Effective January 7, 1999)

CASE 94-C-0095, et al.

BY THE COMMISSION:

BACKGROUND

On July 22, 1998, the Commission issued an Order Regarding Directory Database Issues (July 22, 1998 Order or the Order) in Cases 94-C-0095, 95-C-0657, 91-C-1174 and 96-C-0036. Petitions for rehearing or clarification of the Order were filed on August 28, 1998 by AT&T Communications of New York, Inc. (ATT), New York State Telecommunications Association, Inc. (NYSTA) and New York Telephone Company, d/b/a Bell Atlantic-New York (BA). On September 14, 1998, Reply and Response papers were filed by BA, ATT and INFONXX, Inc. (INFONXX). Comments on the petitions for rehearing were filed by White Directory Publishers, Inc. and Yellow Book USA L.P. (White and Yellow Book) on November 12, 1998 and by the Association of Directory Publishers (ADP) on November 13, 1998.

BA, ALLTEL New York, Inc. (ALLTEL), Citizens Telecommunications Company of New York, Inc. (Citizens), Frontier Telephone of Rochester, Inc. (FTR) and NYSTA filed tariff revisions in response to the Order.

On October 16, 1998, INFONXX, Inc. filed a motion for expedited review of BA's tariff filing. Metro One Telecommunications Inc. (Metro One) filed comments on BA's tariff filing on October 30, 1998. On November 2, 1998, BA and NYSTA filed replies to the INFONXX motion. INFONXX filed a response to BA's reply on November 12, 1998.

THE COMMISSION'S ORDER

The Commission's Order required local exchange companies (LECs) to provide access to their directory databases to all companies that request access for the purpose of publishing a directory or providing directory assistance services. Every LEC was required to provide access on the same terms as it provides access to its own directory publisher or directory assistance (DA) provider. Each LEC was directed to provide access to its database at a price that is cost-based and

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nondiscriminatory. Pricing issues were referred to the Network Elements Proceeding in Cases 94-C-0095, 95-C-0657, 91-C-1174 and 96-C-0036. LECs were directed to file tariff amendments with the terms and conditions of their directory database access offering consistent with the Order. The tariffs were to be effective on a temporary basis with permanent rates to be set in the Network Elements Proceeding.

PETITIONS FOR REHEARING/CLARIFICATIONBell Atlantic

In its petition for rehearing, BA argues that a LEC should not be required to provide access to its database to companies that are not telecommunications carriers because Section 251(c)(3) of the Telecommunications Act of 1996 (the Act) does not require it. BA notes that section 251 limits the provision of unbundled network elements to telecommunications carriers to be used for providing telecommunications service.

BA cites the FCC's decision in *INFONXX v. NYNEX*¹, in which the FCC rejected the request of INFONXX for access to BA's DA database on the ground that it was neither a provider of telephone exchange service nor a provider of telephone toll service, under Section 251(b)(3) of the Act.

BA argues that the Order's terms regarding non-carriers are not authorized by the Public Service Law (PSL) because sale of directories to a third party is not an essential public service.

BA also argues that rates for sale of directory listings should be negotiated between the parties and not tariffed, as provided in the Order. BA disagrees with the Order's directive that rates for sale of directories be cost-based. It contends that the cost-based rate requirements of Section 252(d) of the Act only apply to unbundled network elements provided to telecommunications carriers. BA argues that

¹ *INFONXX v. NYNEX*, Memorandum Opinion and Order, DA 98-961, Rel. May 27, 1998, par. 11-12.

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since non-carriers have no limitations on their rates or terms and conditions for their directories, cost-based restrictions on LECs are inappropriate. BA continues that providing directory listings (DL) to non-carriers is governed by Section 222(e) of the Act, which requires that charges be set at reasonable levels, but, it argues, not cost-based levels. BA argues that Congress did not intend that pricing for subscriber listing information would be based only on costs. According to BA, under the Act, the charge for directory listings must take into account the pro rata cost of gathering and maintaining the information, the cost of providing the information and the value of the listings themselves.¹

As to the reasonableness of its current charges for directory listings, BA takes issue with the Commission's conclusion that its rates are at the high end of telephone companies, based on a Cowles/Simba survey. BA includes an affidavit of one of its employees with a survey of current rates and processing/administration fees, which shows BA with the lowest rates and no fees.

BA requests that the Commission modify the Order to eliminate the requirements that a LEC provide access to its directory database to non-carriers, that a LEC provide directory listings at a cost-based rate, and that the rates be tariffed.

NYSTA

NYSTA agrees with BA that non-carriers should not be allowed access to LEC directory databases, citing Section 251(b)(3) of the Act. NYSTA states that the Act is clear in requiring LEC's to provide access to their databases only to competing providers and not to non-carrier directory publishers. NYSTA contends that the Commission has improperly expanded the scope of Section 251(b)(3) to include non-carriers.

NYSTA argues that there is no rational basis for the Order's requirement that directory database or subscriber list

¹ BA's petition at 13-14.

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information be provided as tariffed services. It continues that Section 251(b) requires database access only when a specific request is received from a competing carrier. NYSTA says that negotiation of those requests is contemplated by the Act. Similarly, NYSTA contends that subscriber list information is to be provided under negotiated agreements, not tariffs, under Section 222(e) of the Act.

NYSTA argues that the cost-based rate standard set out in the Order contravenes the rural LEC exemption in the Act which excuses rural LECs from providing directory database access in some circumstances. According to NYSTA, under Section 251(f)(1)(B), rural LECs are not required to provide database access until a bona fide request for unbundled network elements (UNEs) is made to the Commission and the Commission decides that the exemption should be removed. According to NYSTA, the Act contemplates negotiated agreements between the rural LECs and competitors, not tariffed services.

NYSTA requests clarification of the Order on the method for providing directory database information. It points out that the Order says "paper or electronic format" is required on page 2 and "hard copy and electronic format" on page 10. NYSTA is concerned that some LECs may be required to incur additional costs for putting the information in electronic format. It wants such costs to be borne by the party requesting access.

NYSTA also requests clarification that the subscriber list information, that must be provided, is the same as what the LEC currently provides. For example, some companies provide name and number, others also provide address. Again, NYSTA requests that the cost of providing information, in addition to what the LEC normally provides, be borne by the requesting party.

NYSTA requests clarification of the Order regarding provision of nonpublished listings. The Order does not require LECs to provide nonpublished listings because PSL section 91(5) prohibits sale or offering for sale the names or addresses of unpublished customers. NYSTA says in practice some LECs share this information, which is marked as not to be shared with the

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public. The LECs then respond "unlisted" rather than "no record" to a request for a nonpublished customer's number.

NYSTA requests that this sharing continue, subject to a commitment by competing providers of telephone exchange and toll service to respect the privacy indicator on the listing.

AT&T

ATT generally supports the Order but requests rehearing of the provision regarding nonpublished listings. ATT argues that directory information service providers should all have equal access to nonpublished and unlisted directory listings. ATT points out that when consumers request a nonpublished number from a LEC, the LEC operator can say that the customer has telephone service in the area but the customer's number is nonpublished. In contrast, the non-LEC provider will have no record of the customer and can only respond that there is no listing for that name. ATT stresses that this difference in the completeness of the database will make a qualitative difference to the customer, who will most likely choose the LEC provider with complete listings over the competitor with incomplete listings.

ATT requests that all companies be given the complete database on condition that the provider adhere to the Commission's Privacy Principles. ATT contends that since the nonpublished listings will be provided at no charge, PSL section 91(5) will not be violated.

ATT agrees that LECs should be required to file tariffs for directory database access and directory listings and argues that interconnection agreements should be modified to comply with the Order. It notes that BA refused to modify the terms of its interconnection agreement after the Order was issued.

PARTY REPLIES, RESPONSES AND COMMENTS

Bell Atlantic

In its Reply to the petitions for rehearing filed by NYSTA and ATT, BA supports NYSTA's proposal that the Order allow LECs to share nonpublished numbers in their directory databases.

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It says all the LECs have an interest in protecting the privacy of nonpublished customers. However, BA opposes ATT's proposal to require LECs to provide non-LEC DA providers with nonpublished information. BA argues that non-carriers are not subject to the Act or the PSL and their compliance with privacy principles cannot be assured. BA asserts that only LECs are required to provide directories to nonpublished customers and therefore only LECs need their names and addresses.

BA also disagrees with ATT regarding modifying interconnection agreements to reflect policies of the Order. It argues that any company, regardless of whether it has an interconnection agreement, may purchase services offered in a tariff.

AT&T's Response

ATT favors continuation of the current practice of BA collecting subscriber listings for all New York State carriers. It says the public interest would not be served by changing this practice.

ATT disagrees with NYSTA's argument that electronic feed be considered customized data for companies that do not currently provide it in that form. It says that any costs associated with bringing a LEC's processes up to standards of an efficient LEC should not be recovered from new entrants.

Response of INFONXX to BA's Petition

INFONXX, a provider of directory assistance services, urges the Commission to deny BA's petition for rehearing. It says that full competition in the DA market awaits the removal of obstacles created by the exercise of monopoly power over the essential directory listing database enjoyed by the incumbent LEC.¹

INFONXX argues that the Order represents the Commission's independent effort to promote competition and is

¹ Response of INFONXX at 3.

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consistent with the Act. INFONXX contends that the Act allows states to supplement federal pro-competitive efforts to achieve the goals of the Act: maximizing competition and minimizing the need for regulation in the telecommunications marketplace. It cites Section 251(d)(3) of the Act as stating that the FCC shall not preclude the enforcement of any regulation, order, or policy of a State commission that establishes access and interconnection obligations of LECs; is consistent with the requirements of Section 251 and does not substantially prevent implementation of that section and the purposes of the Part. INFONXX concludes that the Commission's order may vary from the Act as long as it is consistent with the overarching principles of the Act. INFONXX continues that the Order is not inconsistent with the Act with regard to granting access to non-carrier competitors. It says no language in the Act prohibits states from promoting competition more broadly. INFONXX responds to the FCC Common Carrier Bureau's decision denying it access to BA's database because INFONXX is not a telecommunications carrier. INFONXX contends that the FCC's focus was on the Act's mandates, rather than what states are allowed to do. INFONXX adds that the decision is on appeal.

White and Yellow Book and ADP

White and Yellow Book and ADP oppose the LECs' petitions for rehearing. They favor incremental cost-based rates for directory listings, saying such rates were contemplated by the FCC when it called for "reasonable" rates. They also support tariffed rates, pointing out that directory listing rates are tariffed in other states. They also emphasize the unequal bargaining power between publishers and LECs, which have a monopoly on the only current and complete source of directory information. The publishers state that only if directory listings are provided at cost-based tariffed rates will a level playing field for directories exist and competition be advanced. They urge the Commission to deny the LECs' petitions.

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THE TARIFF FILINGS

Bell Atlantic

BA filed tariff revisions to: introduce Directory Assistance Listings Service (DALIS) and Directory Publishers Listing Service (DPLS); modify rates for Directory Assistance Listings Transfer Service (DALT) to include provisions for compensating participating competing local exchange companies (CLECS) and independent local exchange companies (ILECS); and, make certain other modification to its directory listing data services.

DALIS provides non-carrier DA service providers with subscriber name, address and telephone number data from BA's directory listing database. Data is provided in an initial extract via magnetic cartridge, with daily updates via electronic transfer. BA filed rates for DALIS which, for the entire BA customer base, would result in a one time charge of \$292,539 for initial data extraction and monthly charges of \$21,753 for ongoing, daily updates.

DPLS is designed to provide directory listing data to directory publishers. Under BA's proposal, a publisher would provide BA with a list of area codes and direct three digits (NXX codes) of exchanges for which it wants data. BA would provide an initial database extract via magnetic tape, with optional periodic updates via magnetic tape. BA filed rates of \$0.20 per listing for each DPLS listing initially extracted. Rates for DPLS updates would be arrived at on an individual case basis.

For both DALIS and DPLS services, CLECs and independent local exchange companies, whose listings are included in the information sold by BA, would receive compensation for their listings at the rate of \$0.03 per listing. The NY State Access Settlement Pool would act as a clearinghouse, and its costs would be charged to the non-carrier DA provider or directory publisher at the rate of \$0.0173 per listing. No information about customers with nonpublished or unlisted numbers would be included in either the DALIS or the DPLS product.

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DALT is an existing directory listings database offering that is only available to ILECs and CLECs for providing DA services to their customers. It is not available to non-carriers that are in the business of providing DA services or publishing directories, but which do not also provide telephone service to their customers or represent such telephone service providers. DALT data includes information pertaining to nonpublished and unlisted customers. DALT is priced such that for all of BA's directory data (including data from participating ILECs and CLECs), an initial data extract would cost \$83,341, and ongoing, daily updates would cost \$3,866 per month.

BA's proposed rates for the DALS and DPLS appear to be in the range of three to four times the magnitude of its rates for DALT. The company indicates that DALT rates are set at incremental cost levels, but that the DALS and DPLS rates reflect a competitive market value associated with the directory database information.

ALLTEL, FTR and NYSTA

ALLTEL, FTR and NYSTA filed tariff revisions that introduce Directory Subscriber Listing Information Service. However, these tariffs include no rates, but merely indicate that rates will be developed on an individual case basis.

Citizens

Citizens filed a directory listings database service tariff containing proposed rates of \$1.00 per listing for the initial extract and \$2.50 per listing for updates. These rates appear to exceed incremental cost, although the company did not provide cost information with the filing.

INFONXX'S MOTION AND COMMENTS

On October 16, 1998, INFONXX, a non-carrier DA provider, filed a motion requesting an expedited review of BA's tariff filing. INFONXX states that the filing violates the Commission's directive that all DA providers be offered directory

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database services at rates set at cost and on a non-discriminatory basis. INFONXX argues that BA's cost studies exaggerate the cost of both the DALT and DALS service offerings. INFONXX also argues that BA's failure to include data on nonpublished listings in the DALS offering does not conform with the Order. INFONXX further argues that BA's directory database tariff filings improperly state or imply that BA owns the directory data. INFONXX asks that BA's directory listing database services tariff be revised so that non-carrier DA providers are, in all respects, treated equally to ILECs and CLECs.

INFONXX objects to BA's creation of a clearinghouse function for reimbursing competitive providers for their listings. It says charges for such a function are merely a way for BA to create costs to be borne by its competitors. INFONXX characterizes the clearinghouse concept as anti-competitive and wasteful as evidenced by the high prices.

BA'S REPLY TO INFONXX

On November 2, 1998, BA responded to the INFONXX motion. BA argues that price discrimination should not be an issue, as INFONXX may subscribe to DALT if it is either an agent for a LEC or CLEC, or becomes a CLEC itself. In addition, BA argues that under the law, differently situated entities may be charged different rates. The company claims that the rates for DALS are just and reasonable and in accordance with the Order.

As to the release of nonpublished information, BA takes the position that under the law it cannot release nonpublished customer information to non-carrier entities like INFONXX.

Regarding the matter of ownership of directory listings, BA indicates that INFONXX's concerns should be addressed by BA revising the relevant language of its directory listings database service tariffs to parallel that of its Electronic White Pages tariff. That tariff states, "Electronic

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White Pages database is and shall at all times remain the property of the Telephone Company.¹

In an effort to support its position that DPLS and DALs should be "market priced," BA also submitted affidavits indicating that there are multiple sources of customer listing data available to non-carrier DA providers, and the prices it proposes to charge for DALs and DPLS are competitive with those charged for the alternatives.

METRO ONE'S COMMENTS

Metro One, a national provider of competitive directory assistance, contends that competitors need to have directory listing data available at terms and costs similar to those that apply to incumbent companies. Metro One argues that BA's filing should be rejected as non-compliant with the order, in particular because the rates it has proposed are not cost-based. Metro One also argues that BA should be required to provide access to directory listings for all of Bell Atlantic North, and not merely those which are used for its New York State operations. Finally, Metro One urges the Commission to order refunds, with interest at BA's authorized rate of return, of all excessive charges paid under BA's directory listing database tariffs.

DISCUSSION

Access

Extending access to LEC directory databases to non-carriers is based on our authority under PSL sections 91 and 94. PSL section 94 gives the Commission general supervision of all telephone corporations. PSL section 91(1) requires all telephone corporations to furnish facilities that are adequate, just and reasonable. Section 91(3) provides that a telephone corporation may not give any undue or unreasonable preference to any person

¹ New York Telephone's PSC No. 900, Section 9, 2nd revised page 27, paragraph E.3(o).

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or subject any person to undue or unreasonable prejudice or disadvantage.

We have determined that encouraging competition in the areas of directory listings and directory assistance will enhance service to New York State customers. It is well established that the Public Service Commission may require incumbent utilities to provide competitors services upon the same terms and conditions that the utility serves itself. In this case, consistent with that doctrine, we are requiring LECs to provide access for the purposes of directory assistance service and directory publishing to non-LECs on the same terms and conditions that LECs provide such services to their affiliates and other LECs. This action will not only prevent discrimination but advance the public interest by promoting competition in directory assistance and directory listing markets as well as telecommunications in general. Nothing in the Act precludes us from taking this action.¹

Therefore, BA's and NYSTA's petitions on this point are denied.

Tariffed rates based on incremental cost

Directory databases are controlled by LECs because of their monopoly status. We have determined that the directory database business should be competitive. Pricing access to the database and directory listings at forward looking incremental costs allows LECs to earn a reasonable profit without taking advantage of their monopoly status. Offering the service on a tariffed basis at a nondiscriminatory rate fosters the ability of competitive providers to compete head to head with the LECs on a fair basis.

As to BA's arguments about pricing methodology, the Order establishes temporary rates. The question of pricing for permanent rates is referred to the Network Elements Proceeding.

¹ See 47 U.S.C. section 251(d)(3).

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Offering DA and DL access on a tariffed basis ensures that directory database access will be provided at cost-based and nondiscriminatory rates and will eliminate the unequal bargaining power of the LEC over competitive providers, as alleged by competitors. This offering will promote competition, consistent with Commission policy. Therefore, BA's and NYSTA's petitions for rehearing on this issue are denied.

If an interconnection agreement, by its terms, may be modified for superseding events, then the July 22, 1998 Order may require modifications to some interconnection agreements. If modification is appropriate, it is not sufficient for BA simply to file tariffs.

Format of directory information

NYSTA correctly points out that the Order requires database information to be provided in paper or electronic format at page 2 and paper and electronic format in the ordering clause at page 10. To clarify the Order, all LECs must offer database information in both paper and electronic formats. The requesting DA or DL provider may request the data in either or both formats and pay for the information accordingly.

In 1998, it is not unreasonable to expect telephone companies to provide directory data in both electronic and paper formats. If a company does not have electronic technology, it may request a waiver of this requirement from the Commission. However, the requirement of the Order is that all companies, at a minimum, will offer directory data in both electronic and paper formats. Similarly, listing information should be provided as it appears in the LEC's directory. If a customer has requested to be listed with name and number only, that is the data that should be provided.

Sharing of nonpublished customer data

PSL section 91(5) provides that: "No...telephone corporation shall sell or offer for sale any names and/or addresses of any of its customers whose listings have been

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omitted from the telephone company's published directory at the request of the customer." According to its legislative history, the purpose of this provision is to reduce the amount of unsolicited mail and contacts received by utility customers whose names and addresses are sold to businesses.

ATT points out that non-LECs are at a competitive disadvantage compared with LECs in providing information on nonpublished customers. The LEC can say "The number is unlisted" whereas the non-LEC will have no record of the customer. According to BA and NYSTA, the LECs are already sharing nonpublished customers' names, addresses and numbers with other LECs and, arguably, not violating PSL section 91(5) because they are not selling or offering the information for sale. The nonpublished number that is shared has a designation that it is not to be given out to the public. By that reasoning, some information about nonpublished customers, that is their name, address and the fact that they are unlisted, should be given to non-LECs without charge, for the purpose of providing directory assistance services. The address should be used for identification purposes only. If the DA caller does not have the address of the nonpublished customer, the DA service provider should not give it out. As a result, LECs will not have an advantage over non-LECs in providing DA.

LECs shall provide nonpublished customer names and addresses to non-LECs only on the condition that the receiver of the information agrees to adhere to the Commission's Privacy Principles in Case 90-C-0075 and agrees not to use such information for any purpose other than informing callers that a customer's telephone number is unlisted. Any use of such information found to be inconsistent with PSL section 91(5) or this order may result in loss of access and in a penalty action.

LECs may continue to share nonpublished numbers with their LEC directory assistance provider.

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Tariffs

None of the LEC directory listing database tariff filings, which have been received to date, comply with the July 22, 1998 Order. The LECs are directed to file revisions to these tariffs within 10 days of the issuance of this order to become effective upon filing, on a temporary basis, which bring them into compliance with the July 22, 1998 Order, as modified and clarified by this order.

BA and Citizens are required to file revised directory listings database service tariffs in which all rates, regardless of the type of customer (i.e., non-carrier DA provider, ILEC, CLEC, or directory publisher), are set at incremental cost. In other words, the rate for DALS and DALT must be the same and must be set at incremental cost. The rate for DPLS must also be set at incremental cost. ALLTEL, FTR and NYSTA are directed to modify their tariff filings to include specific rates for directory listings database services, which are set at incremental cost. Any LECs aside from BA, which have not produced cost studies indicating the incremental cost of directory listings database services, or cannot do so in time to be used as a basis for the rates which must go into effect within 10 days of the issuance of this order, are directed to base their rates on BA's incremental costs.

With regard to including data about subscribers of nonpublished and unlisted telephone numbers in directory listing database products of the LECs for non-carrier providers of DA services, the data provided should include the names and addresses of such subscribers, but not their telephone numbers. All LECs are directed to modify their directory listing database service offerings accordingly.

INFONXX's allegations that BA's cost studies overstate the incremental costs of providing directory listing database services need not be further addressed here, but instead are referred to the Network Elements Proceeding, where permanent rate decisions will be made. With regard to the clearinghouse function proposed by BA in its tariff, charges for this function

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must be the same for all customers and must be based on incremental cost.

Metro One's request that the Commission direct NYT to expand its directory listing database products to encompass the entire Ball Atlantic North area is denied. While such an expansion might make economic and business sense, the Commission does not regulate BA directory data for customers outside of New York State.

CONCLUSIONS

The Commission properly ordered LECs to provide database access to all entities that request it for the purpose of providing DA service or publishing a directory. The temporary rates for directory database services shall be at incremental cost and provided in tariffs. Data should be offered in both paper and electronic formats.

LECs may continue to share nonpublished customer names, addresses and numbers with other LECs. The number shall have a designation that it may not be shared with the public. Names and addresses of nonpublished customers, without telephone numbers and with a designation that the customer's number is unlisted, shall be offered by LEC to all non-LEC entities that request it for the purpose of offering DA service, on the condition that the information be used for directory assistance service only and not be sold or used for other purposes and that the entity adhere to the Commission's Privacy Principles. Addresses may be used for identification purposes only.

If an interconnection agreement, by its terms, may be modified for superseding events, then the July 22, 1998 Order may require modifications to some interconnection agreements.

The petitions of NYSTA and ATT for rehearing and clarification are granted to the extent set out in this order, but in all other respects denied. The petition of BA is denied.

The LECs should file revised tariffs consistent with this Order.

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The Commission orders:

1. New York Telephone Company, d/b/a Bell Atlantic-New York, ALLTEL New York, Inc., Citizens Telecommunications Company of New York, Inc., Frontier Telephone of Rochester, Inc., and New York State Telecommunications Association, Inc. are directed to refile their directory database tariffs, the details of which are listed in Appendix 1, modified as described herein. The modifications should be filed within 10 days of the issuance of this order and shall become effective upon filing, on a temporary basis.

2. The petition for rehearing filed by Bell Atlantic is denied.

3. The petition for rehearing and clarification filed by New York State Telecommunications Association should be granted in part, in that the July 22, 1998 order is clarified to require LECs to provide directory database data in paper and electronic format. Local exchange companies shall share nonpublished customer names and addresses, but not telephone numbers, with non-LECs for the purpose of providing directory assistance services. The nonpublished information shall be provided subject to the requesting entity's agreement to abide by the Privacy Principles in Case 90-C-0075 and agreement not to use the information for any purpose other than informing directory assistance callers that the customer's telephone number is unlisted. Address information of nonpublished customers shall not be given out by directory assistance providers and shall be used for identification purposes only. Local exchange companies may continue their practice of sharing nonpublished customer names, addresses and numbers with each other. NYSTA's petition, in all other respects, is denied. Any violation of this order or PSL section 91(5) may result in loss of DA access and/or subject the violator to a penalty action under PSL section 25.

4. AT&T's petition for rehearing is granted in part, as set out in Ordering Clause 3 above. As to interconnection agreements, if by their terms they allow for modification for a superseding event, modification may be appropriate under this

CASE 94-C-0095, et al.

Order and the July 22, 1998 Order. AT&T's petition, in all other respects, is denied.

5. These proceedings are continued.

By the Commission,

(SIGNED)

DEBRA RENNER
Acting Secretary

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Appendix 1
Page 1 of 2

Administrative Details

Filing by: New York Telephone Company
Revisions to: P.S.C. No. 900 - Telephone

Preface

3rd Revised Page No. 9

Tariff Index

7th Revised Page No. 15

Section 9

Contents

8th Revised Page No. 2

Section 9

Original Page Nos. 44 through 54

Revisions to: P.S.C. No. 914 - Telephone

Preface

5th Revised Page No. 1

Section 4

2nd Revised Page No. 35

3rd Revised Page No. 36

Revisions to: P.S.C. No. 916 - Telephone

Preface

1st Revised Page No. 2

Section 5

2nd Revised Page Nos. 74.3 through 74.6

1st Revised Page No. 74.7

2nd Revised Page No. 74.8

1st Revised Page Nos. 74.9 through 74.12

2nd Revised Page No. 74.13

Original Page No. 71.14

Issued: October 12, 1998

Effective: October 3, 1998

Filing by: ALLTEL New York, Inc.

Revisions to: P.S.C. No. 1 - Telephone

Contents

Second Revised Leaf No. 1

Section 7

Original Leaf Nos. 13 and 14

Issued: September 18, 1998

Effective: October 18, 1998

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Page 2 of 2

Filing by: Citizens Telecommunications Company of NY, Inc.
Revisions to: P.S.C. No. 1 - Telephone
Section 6
First Revised Page No. 1
Original Page Nos. 14 and 15

Issued: October 22, 1998 Effective: November 4, 1998

Filing by: Frontier Telephone of Rochester, Inc.
Revisions to: P.S.C. No. 1 - Telephone
Section 10
Contents
First Revised Page No. 1
Original Page No. 11

Issued: September 3, 1998 Effective: September 5, 1998

Filing by: NYS Telecommunications Association, Inc.
formerly known as NYS Telephone Association, Inc.
Revisions to: P.S.C. No. 1 - Telephone
Index
Third Revised Page No. 3
Section 12
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First Revised Page No. 1
Second Revised Page Nos. 1 and 2

Issued: September 18, 1998 Effective: October 18, 1998

New York Telephone
A Bell Atlantic Company
1095 Avenue of the Americas
New York, N.Y. 10036

Exhibit C

Sandra Dilorio Thorn
General Counsel
Legal Department
Phone (212) 395-6515



January 19, 1999

Honorable Debra Renner
Acting Secretary, Public Service Commission
State of New York
Three Empire State Plaza
Albany, New York 12223

Dear Secretary Renner:

The tariff schedule shown in the attachment to this letter and issued by New York Telephone Company is transmitted for filing in accordance with the requirements of the Public Service Commission, State of New York, effective January 19, 1999 inasmuch as the Commission's office is closed January 18, 1999.

This filing is made in compliance with the Commission's January 7, 1999 "Order Resolving Petitions for Rehearing and Clarification of July 22, 1998 Order Regarding Directory Database Issues and Refiling of Tariffs" in Case Nos. 94-C-0095, 95-C-0657, 91-C-1174, 96-C-0036 and 90-C-0075.

The proposed tariff revisions would amend Tariffs P.S.C. Nos. 900 and 916--Telephone to provide for the following:

- Modification to the P.S.C. No. 900 Tariff of the Directory Assistance Listings Service (DALs) and the Provision of Listings to Directory Publishers (DPLS) tariff provisions to reflect that the Directory database information will be provided in paper or electronic formats;
- Clarification of the P.S.C. Nos. 900 and 916 Tariffs of the provisions for DALs and Directory Assistance Listings Transfer (DALT) to reflect that non-published listings will be included in the Directory Listings database and that Directory Assistance Providers (DASPs) and Telecommunication Carriers (TCs) must abide by the Privacy Principles in Case No. 90-C-0075 and associated liability provisions;

- Adjustment to the P.S.C. No. 900 Tariff of the DPLS, DALs rates and the associated Clearing House Compensation per listings rates to reflect the incremental cost based rate; and
- Minor corrections in text were made.

The Company respectfully requests that newspaper publication requirements be waived for this filing, in view of the fact that copies of the filing are being sent to all active parties to Case Nos. 94-C-0095, 95-C-0657, 91-C-1174, 96-C-0036 and 90-C-0075.

Very truly yours,



Attachment

cc: All Active Parties to Case Nos. 94-C-0095, 95-C-0657, 91-C-1174, 96-C-0036 and 90-C-0075

List of Tariff Pages
Effective January 19, 1999

P.S.C. No. 900--Telephone

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2nd Revised Page 74.7
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PREFACE

Statement of Company's Reservation of Objections and/or Adjustment Provisions

ITEM 11

The rates and changes issued April 21, 1997, reflect the Commission's Order of March 31, 1997 in Case 96-C-1174, and are without waiver of or prejudice to any rights or objections of New York Telephone Company with respect to such Order and are subject to the adjustment provisions of Section 113 of the Public Service Law.

ITEM 12

The rates and changes issued May 1, 1997, reflect the Commission's Order of April 1, 1997 in Case Nos. 95-C-0657, 94-C-0095 and 91-C-1174, and are without waiver of or prejudice to any rights or objections of New York Telephone Company with respect to such Order and are subject to the adjustment provisions of Section 113 of the Public Service Law.

ITEM 13

The rates and changes issued February 9, 1998, reflect the Commission's Order of December 22, 1997 in Case Nos. 95-C-0657, 94-C-0095, and 91-C-1174 and are without waiver of or prejudice to any rights or objections of New York Telephone Company with respect to such Order and are subject to the adjustment provisions of Section 113 of the Public Service Law.

ITEM 14

The rates and changes issued October 2, 1998, reflect the Commission's Order of July 22, 1998 in Case Nos. 94-C-0095, 95-C-0657, 91-C-1174 and 96-C-0036, and are without waiver of, or prejudice to, any rights or objections of New York Telephone Company with respect to such Order and are subject to the adjustment provisions of Section 113 of the Public Service Law. These rates and changes related to Directory Database issues are being filed by the Company to comply with the requirements of the Order. The Company filed a Petition for Rehearing on August 28, 1998, seeking reconsideration and/or rehearing in this proceeding questioning the appropriateness of various provisions contained in the Commission's July 22, 1998 Order.

ITEM 15

The rates and changes issued January 15, 1999, reflect the Commission's Order of January 7, 1999 in Case Nos. 94-C-0095, 95-C-0657, 91-C-1174, 96-C-0036 and 90-C-0075, and are without waiver of, or prejudice to, any rights or objections of New York Telephone Company with respect to such Order and are subject to the adjustment provisions of Section 113 of the Public Service Law.

Issued in compliance with Order of the Public Service Commission dated January 7, 1999 in Case Nos. 94-C-0095, 95-C-0657, 91-C-1174, 96-C-0036 and 90-C-0075.

See PREFACE Item 15 for Statement of Company's Reservation of Objections.

Issued: January 19, 1999

Effective: January 19, 1999

By Sandra Dilorio Thorn, General Counsel
1095 Avenue of the Americas, New York, N.Y. 10036

LISTINGS

J. DIRECTORY LISTINGS DATA SERVICES

The Telephone Company will provide access to the Telephone Company's New York alphabetical White Pages Directory Listings (DL). Access is provided to Directory Publishers (DP) and Directory Assistance Service Providers (DASPs) who request Directory Listings Data Services in order to publish a directory, or provide Directory Assistance Service to their end users. Access to DL is provided by the Telephone Company on various media and is equivalent in content to the DL data that is used to publish the Telephone Company's directory. The Telephone Company will provide two Directory Listings Data Services as set forth in 1. and 2. following.

1. Directory Assistance Listing Service (DALS)a. Description of Service

Directory Assistance Listing Service (DALS) provides Directory Assistance Service Providers (DASPs) or Directory Publishers (DP) with subscriber name, address and telephone number listing data (including EAS Listings) contained in the Telephone Company's directory listing database formatted for the purpose of their provision of Directory Assistance services and publishing White Page Directories, in any format, that does not contain any classified advertisement. A DALS Technical Transfer Specification document will be made available to DASPs or DPs for use in designing their DALS database system.

DALS will include Initial Extract and Daily Updates as follows:

(A) Initial Extract

Initial Extract contains the listed names, addresses and telephone numbers of Telephone Company, Independent Company, and CLEC subscribers. After receiving a written order to prepare the Initial Extract, the Telephone Company will process the magnetic cartridge within sixty (60) days. Requests for any other media will be handled on a negotiated basis and rates will be based on incremental cost. Other media includes either Electronic delivery or Paper.

] (C)]

(B) Daily Updates

Daily Updates will reflect all listing change activity occurring since the DASP's or DP's previous update. The updates shall be used solely by the DASP or DP to keep the Initial Extract current. Delivery of Daily Updates will commence the day after the DASP or DP receives the Initial Extract. Each update will be provided via electronic file transfer or paper.

(C)

Issued in compliance with Order of the Public Service Commission dated January 7, 1999
in Case Nos. 94-C-0095, 95-C-0657, 91-C-1174, 96-C-0036 and 90-C-0075.

See PREFACE Item 15 for Statement of Company's Reservation of Objections.

Issued: January 19, 1999

Effective: January 19, 1999

By Sandra Dilorio Thorn, General Counsel
1095 Avenue of the Americas, New York, N.Y. 10036

LISTINGS

J. DIRECTORY LISTINGS DATA SERVICES (Cont'd)1. Directory Assistance Listings Service (DALs) (Cont'd)b. Regulations

(A) This service is for use by DASPs in providing Directory Assistance Service or for DPs for publishing White Page Directories, in any format, that does not contain any classified advertising.

(B) DALs will include all directory listings in the database. However, non-published listings will include only the customer names and addresses, but not telephone numbers and will be designated that the customer's number is non-published. Non-published listings will be provided only for the purpose of providing Directory Assistance Services. (C)

The non-published information shall be provided subject to the DASP's agreement to abide by the Privacy Principles in Case No. 90-C-0075 and with the agreement not to use the information for any purpose other than informing directory assistance callers that the customer's telephone number is non-published. Address information of non-published customers shall not be given out by DASPs and shall be used for identification purposes only. Any violation of this provision or PSL section 91 (5) may result in loss of DA access and/or subject the violator to a penalty action under PSL section 25. (N)

DALs Updates will be provided on the same periodic basis that the Telephone Company updates its database.

(C) The Telephone Company will correct errors in its previously transmitted DALs data via daily updates in the same manner that the Telephone Company corrects errors included in its own database. DASP or DP inquiries regarding DASP or DP listing content will be directed to the owner of the listing (i.e., the Telephone Company, Independent Telephone Company, or CLEC).

(D) The minimum service period for DALs is twelve (12) months. DALs service shall renew for a new minimum service period of twelve (12) months at the end of the initial or renewal term unless the DASP or DP provides written notice of termination 90 days in advance of the expiration of the then current term. The regulations specified for deposits and payment of service in Section 1, Paragraph (H) of this Tariff will apply. If a DASP or DP cancels an order for the Initial Extract prior to the scheduled delivery date, the Telephone Company shall apply a cancellation fee to the DASP or DP which will be the full nonrecurring charge for the DALs service. If a DASP or DP terminates subscription to DALs on or after the scheduled delivery date of the Initial Extract, termination fees will equal the DALs monthly rate multiplied by the remaining months in the minimum service period.

(E) DALs may not be used for any purpose which violates federal or state laws, statutes, regulatory orders or tariffs.

Issued in compliance with Order of the Public Service Commission dated January 7, 1999 in Case Nos. 94-C-0095, 95-C-0657, 91-C-1174, 96-C-0036 and 90-C-0075.

See PREFACE Item 15 for Statement of Company's Reservation of Objections.

Issued: January 19, 1999

Effective: January 19, 1999

By Sandra Dilorio Thorn, General Counsel
1095 Avenue of the Americas, New York, N.Y. 10036

LISTINGS

DIRECTORY LISTINGS DATA SERVICE (Cont'd)1. Directory Assistance Data Listings Service (DALIS) (Cont'd)b. Regulations (Cont'd)

- (F) The Telephone Company will provide written specifications for the format and delivery of DALIS data in a Technical Specifications document. Any future changes to the format are at the sole discretion of the Telephone Company and will be communicated to all DASPs or DPs with not less than 90 days notification.
- (G) The DASP is not permitted to resell or transfer the listings or use the listings for telemarketing, sales, marketing, or other non-directory assistance purposes.
- (H) The DP can use, copy, enhance, and modify the Listing Information received solely in the (a) compilation of databases to be contained in, and the marketing and sublicensing of, DP's Directory Products or (b) accessing, searching for, and location of Listing Information; checking information already in the possession of the user against the particular Listing Information that has been located by such search; and/or printing out or recording the individual Listing Information items that have been located by such search. The DP shall not use the Directory Listings Information for any activities associated with the production or publication of Yellow Page directories or other advertiser supported Directories. The DP is not permitted to use the transferred listings for telemarketing, sales, marketing, or other non-directory purposes.
- (I) The provisioning of DALIS data will be subject to (1) and (2) as follows:
 - (1) Except for the permitted uses, the DASP or DP shall not disclose DALIS data to others and shall use due care in providing the security and confidentiality of DALIS data. The DASP or DP shall not rent, license, resell or otherwise exchange DALIS data with or without compensation for any purpose nor shall the DASP permit its end users to do the same. The DASP shall not reproduce DALIS data.
 - (2) Failure to comply with the provisions of this Tariff shall result in termination of the service and the DASP or DP shall immediately return to the Telephone Company all copies of DALIS data in its possession and shall make no further use of DALIS data. The Telephone Company may suspend or cease the service when the DASP or DP fails to make timely payment of charges or when the Telephone Company has reasonable grounds to believe that the DASP or DP has been or is in violation of the prescribed use and application of the data or other terms of the Tariff. Upon DASP or DP termination of DALIS, the DASP or DP shall return all copies of DALIS or provide adequate written proof that the data has been removed from its systems and has been destroyed.

Issued in compliance with Order of the Public Service Commission dated January 7, 1999 in Case Nos. 94-C-0095, 95-C-0657, 91-C-1174, 96-C-0036 and 90-C-0075.

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By Sandra Dilorio Thorn, General Counsel
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LISTINGS

J. DIRECTORY LISTINGS DATA SERVICE (Cont'd)1. Directory Assistance Data Listings Service (DALIS) (Cont'd)b. Regulations (Cont'd)

- (J) The DASP or DP, upon request, shall make available to the Telephone Company all reasonable and necessary records to allow the Telephone Company to verify and audit the uses and applications of the Directory Listings (DL) provided to DASP or DP. The Telephone Company may perform an audit at any time upon written notice to the DASP or DP.
- (K) The Telephone Company does not warrant continued availability of (a) any particular format, specifications, mode, or medium in which it makes DL data available, or (b) all the DL data presently provided as part of DALIS. The Telephone Company will provide written notice ninety (90) days in advance of the discontinuance of such information to the DASP or DP. Performance by the Telephone Company shall be excused if the Telephone Company no longer maintains a database containing DL or no longer produces, in the ordinary conduct of its business, DL data, as described in this Tariff.
- (L) 1
- (D) J
- (M) The Telephone Company makes no express or implied warranties with respect to the accuracy or completeness of the directory listing data provided as part of DALIS, and the DASP or DP hereby releases the Telephone Company from any liability for damages due to errors or omissions in the directory listing data provided under this Tariff or by reason of delay in providing the directory listing data.
- (N) The DASP or DP will provide a written request, signed by a duly authorized representative, to initiate DALIS service. The DASP or DP shall not permit anyone but its duly authorized employees, affiliates, or agents to inspect or use the DL data furnished by the Telephone Company. The DASP or DP shall take appropriate security measures to guard against unauthorized use of the DL information furnished hereunder by employees, affiliates, agents, or others; but any unauthorized use, whether by the DASP or DP, its employees, affiliates, or others, shall be deemed a violation of this Tariff, irrespective of the security measures which have been or are being taken by the DASP or DP.

Issued in compliance with Order of the Public Service Commission dated January 7, 1999
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LISTINGS

DIRECTORY LISTINGS DATA SERVICE (Cont'd)1. Directory Assistance Data Listings Service (DALS) (Cont'd)b. Regulations (Cont'd)

- (O) Nothing in this Tariff or elsewhere shall give the DASP or DP any exclusive or proprietary right to the DL data, and the Telephone Company shall be free at any time to provide information to others under the same or different terms and conditions as the Telephone Company, in its sole discretion, may determine.
- (P) The Telephone Company shall not be liable for any errors and omissions in the Telephone Company's listings, including the DL data provided to the DASP or DP. The DASP or DP shall protect, indemnify, save harmless and defend the Telephone Company from and against any and all loss, liability, damages and expense arising out of any demand, claim, suit or judgment for damages that may arise out of the Telephone Company's supplying of DL or DASP's or DP's use of data contained therein irrespective of any fault, failure, or negligence on the part of the Telephone Company, including but not limited to claims made by consumers or other telephone companies(s) or ITC(s) relating to the provision, use or accuracy of DALS or DL data.
- (Q) The Directory Listing Database is and shall remain the property of the Telephone Company. The DASP shall have no right to permit any other DASP or person to use any information extracted therefrom without the express written consent of the Telephone Company, provided, however, the DASP is authorized to make a general distribution of the directories that it published. (C)
- (R) Failure of the Telephone Company to enforce or insist upon compliance with any provision of this Tariff shall not constitute a waiver of its right to enforce future compliance with that provision or compliance with any other provision hereof.
- (S) The DASP or DP, its employees, representatives, or agents shall not use any methods of advertisement, solicitation, order form, billing invoice, stationary, promotional material or any artifice or device which would tend to create the impression or imply that any service provided by the DASP, whether using DALS or not, was or sponsored by the Telephone Company.
- (T) The DASP or DP shall also be responsible to the Telephone Company for any and all loss, damage and expense the Telephone Company may suffer as a result of the publication by the DASP or DP, whether advertent or inadvertent, by the DASP or DP of the subscriber's non-published telephone number, including, but not limited to the cost incurred in changing the subscriber's telephone number. (N)

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LISTINGS

DIRECTORY LISTINGS DATA SERVICES (Cont'd)

1. Directory Assistance Data Listings Service (DALS) (Cont'd)

c. Compensation to Other Telephone Companies

The Telephone Company will provide a Clearing House Administrative Function for the collection and remittance services associated with the sale of directory listings on behalf of Independent telephone companies (ITCs) and CLECs which provide to the Telephone Company the directory listings data for their New York local exchange service customers.

The Telephone Company sells its listings, including the CLEC and ITC listings, to a DASP at the appropriate tariffed rates for DALS as specified in Paragraph (e) following.

The Telephone Company will bill the DALS rate as specified in Paragraph e.(A) and a Clearing House Administrative Function rate for the ITCs or CLEC listings to the DASP specified in Paragraph e.(B).

The ITCs or CLECs will be compensated for their listings included when DALS services are performed.

The Clearing House Administrative Function is only provided in connection with Directory Assistance Listings Service (DALS), Directory Publisher Listings Service (DPLs) as specified in J.2. and Directory Assistance Listings Transfer (DALT), as specified in Section 5.8.1.6 in the P.S.C. No. 916--Telephone Tariff.

d. Rate Application

The Initial Extract Charge provides for the initial full load and applies per extraction. Nonrecurring charges apply as specified in J.1.e.(A)(1) following. The Daily Update monthly rate provides for the daily updates and applies on a monthly basis as specified in J.1.e.(A)(2) following. In addition, shipping costs for the media will be incurred by the DASP.

The Clearing House Administrative Function for the CLEC or ITC directory listings rates will apply in addition to the Initial Extract and/or Daily Update monthly rates.

The Compensation rate will be remitted to the ITCs or CLECs for their listings provided when the DPLS services were performed.

The Clearing House Administrative Function and Compensation rates apply on a per listings basis, as specified in J.1.e.(B)(1) and J.1.e.(B)(2) following.

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LISTINGS

DIRECTORY LISTINGS DATA SERVICES (Cont'd)1. Directory Assistance Data Listings Service (DALIS) (Cont'd)e. Rates and Charges

The following rates and charges apply:

(A) <u>DALS</u>		<u>Monthly Rates</u>	<u>Nonrecurring Charges</u>	
(1)	Initial Extract		\$83,341	(C)
(2)	Daily Updates	\$3,866		(C)
(B) <u>Clearing House for ITC/CLEC Listings</u>		<u>Rates</u>		
(1)	Administrative Function - Per Listing	\$0.0173		
(2)	<u>Compensation*</u> - Per Listing	0.0062		(C)

2. Provisioning of Listings to Directory Publishers (DPLS)a. Description of Service

Directory Publishers Listing Service (DPLS) provides Directory Publishers (DP) with the subscriber's Directory Listing data contained in the Telephone Company's directory listings database solely for use by the DP in the publication of a directory. A DPLS Technical Transfer Specification document will be made available to DPs for use in designing their DPLS database system. The DP must provide the area code(s) and NNX code(s) of the requested data. The DP can not transfer or resell or exchange DPLS information with or without compensation to any other DP or to any other person for any purpose.

DPLS will include Initial Extract and Optional Updates at the option of the subscriber as follows:

(A) Initial Extract

Initial Extract contains the listed names, addresses and telephone numbers of Telephone Company, Independent Company, and CLEC subscribers. The DPs in their written request for DPLS, must include the area code(s) and the NNX code(s) for the requested data. After receiving an order to prepare the initial extract, the Telephone Company will process the magnetic cartridge media within five (5) business days.

- * Each Independent Telephone Company (ITC) or Certified Local Exchange Carrier (CLEC) will be compensated at the above compensation rate for their listing data until such time as that ITC or CLEC receives its own approved compensation rate.

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LISTINGS

J. DIRECTORY LISTINGS DATA SERVICES (Cont'd)2. Provisioning of Listings to Directory Publishers (DPLS) (Cont'd)a. Description of Service (Cont'd)(B) Optional Updates

At the option of the DP, two Updates will be available, Periodic Updates and Daily Updates. These updates will contain a list of the most recent Listing change activity since the DP's receipt of the Initial Extract media.

Periodic Updates will include all the Listing change activity that occurred over a four week period. Periodic Updates will be provided every four weeks. The delivery timeframe for the Periodic Update media will be handled on a negotiated basis.

Daily updates contain a list of the most recent change listing activity since the DP's previous update. Daily Updates will be available on an individual case basis. The Delivery timeframe of the daily updates may commence the day after the DP receives the Initial Extract media.

The Daily and Periodic Updates shall be used solely by the DP to publish a Directory. Each update will be provided via electronic file transfer.

b. Regulations

The regulations set forth in J.1.b.(E), J.1.b.(F) and J.1.b.(I)(2) through J.1.b.(R) preceding for DALS, also apply to DPLS. In addition, the following regulations will apply:

(A) The Telephone Company will grant a non-exclusive right to use, copy, and enhance or modify the format of the DPLS listing information solely for use in the compilation of a directory, including non-print directories that provide telephone number and /or address information in other than printed form, including but not limited to : a) Compact Disc Read-Only Memory; b) electronic access via computer, modem, and/or gateway systems; and c) other means of electronic communication.

(B) The Telephone Company will furnish to the DP listing information consisting of the name of the listed subscriber, address, telephone number, and designation (i.e., nature of business) obtained at the time service is initiated, if any, and other details as specified in the Telephone Company's DPLS Technical Transfer Specification which will be made available to DPs for use in designing their DPLS system.

DPLS information may be provided in a Magnetic Tape medium of delivery. Other mediums of delivery will be negotiated on an individual Case Basis and rates will be based on incremental cost. Such additional mediums may include Electronic delivery, Magnetic Tape, CD Rom, Diskette and Paper.

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LISTINGS

DIRECTORY LISTINGS DATA SERVICES (Cont'd)

2. Provisioning of Listings to Directory Publishers (DPLS) (Cont'd)

b. Regulations (Cont'd)

- (C) The DP will notify the Telephone Company promptly in writing, if it discontinues publication or distribution of any directory for any or all of the central office codes included in DPLS. The Telephone Company will cease to furnish to the DP the DPLS data for such central office codes.
- (D) The DP may request additions to or deletions of central office codes from the request for DPLS listings. The DP shall notify the Telephone Company in writing sixty (60) days prior to the desired implementation date for any additions to or deletions from the central office codes included in DPLS.
- (E) The DP will provide a written request, signed by a duly authorized representative, to initiate DPLS service. The DP shall not permit anyone but its duly authorized employees, affiliates, or agents to inspect or use the DPLS information furnished by the Telephone Company. The DP shall take appropriate security measures to guard against unauthorized use of the subscriber listing information furnished hereunder by employees, affiliates, agents, or others; but any unauthorized use, whether by DP, its employees, affiliates, or others, shall be deemed a violation of this Tariff, irrespective of the security measures which have been or are being taken by the DP. Upon request by the Telephone Company, the DP shall advise the names of persons with access to the Subscriber listing information and shall permit the Telephone Company to inspect the premises where the DPLS information is stored, used or maintained. Such inspection shall not release the DP from any responsibility or duty required by this Tariff or applicable law.
- (F) The DP agrees that, in the publication of its directories, the DP will not use any distinctive mark, identification or classification which will identify a particular listing as being a new or changed listing.

Neither the DP nor its employees, agents, or representatives shall represent in any way to any person or make any advertising claim that its directories are sponsored or approved by the Telephone Company or that the Telephone Company has any responsibility for or in connection with the compilation, production, publication, or distribution of DP's directories. The DP shall not publish its directories in such form as may cause or create confusion with or identification with the Telephone Company's directories.

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LISTINGS

DIRECTORY LISTINGS DATA SERVICES (Cont'd)

2. Provisioning of Listings to Directory Publishers (DPLS) (Cont'd)

b. Regulations (Cont'd)

- (G) The Telephone Company shall not be liable for any errors and omissions in the Telephone Company's listings. The DP agrees to release the Telephone Company from any and all liability which may arise due to any errors and omissions in the Telephone Company's listings. The DP shall assume all risk of liability and shall indemnify, protect and save harmless, and defend the Telephone Company from and against any and all loss, liability, damages, and expense arising out of any demand, claim, suit, or judgment for damages which may arise out of the Telephone Company's supplying of listing information or DPLS under this Tariff or DP's use thereof, including but not limited to any claims of other telephone companies or residential or business subscribers irrespective of any fault, failure, knowledge, or negligence on the part of the Telephone Company.
- (H) Nothing in this Tariff or elsewhere shall limit or forbid in any way the format, content, and scope of the directories now being published on behalf of the Telephone Company or to be published in the future.
- (I) The DP shall not permit any other DP or any other person to publish, copy, reprint, or make any other use of the Subscriber DL data unless such use is agreed to in advance in writing by the Telephone Company. Nothing contained in this Tariff shall restrict, impair, or in any way diminish the proprietary interest of the Telephone Company in the information supplied to the DP.
- (J) The DP is not permitted to resell or transfer the listings for non-directory purposes. (C)

c. Compensation to Other Telephone Companies

The Telephone Company will provide a Clearing House Administrative Function for the collection and remittance services associated with the sale of directory listings on behalf of Independent telephone companies (ITCs) and CLECs which provide to the Telephone Company the directory listings data for their New York local exchange service customers.

The Telephone Company sells its listings including the CLEC and ITC listings to a DP at the appropriate-tariffed rates for DPLs as specified in Paragraph (e) following.

The Telephone Company will bill the DPLs rate specified in Paragraph e.(A) and a Clearing House Administrative Function rate for CLEC/ITC directory listings specified in Paragraph e.(B) to the DPs.

The ITCs or CLECs will be compensated for their listings included when DPLS services are performed.

Issued in compliance with Order of the Public Service Commission dated January 7, 1999 in Case Nos. 94-C-0095, 95-C-0657, 91-C-1174, 96-C-0036 and 90-C-0075.

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LISTINGS

DIRECTORY LISTINGS DATA SERVICES (Cont'd)2. Provisioning of Listings to Directory Publishers (DPLS) (Cont'd)c. Compensation to Other Telephone Companies (Cont'd)

The Clearing House Administrative function is only provided in connection with Directory Publishers Listings Service (DPLs), Directory Assistance Listings Service (DALS) as specified in J.1. and Directory Assistance Listings Transfer (DALT), as specified in Section 5.8.1.6 in the P.S.C. No. 916--Telephone Tariff.

d. Rate Application

DPLS will be provided via Magnetic Tape/Cartridge and apply on a per listings basis, as specified in J.2.e.(A) following. In addition, shipping costs for the media will be incurred by the DP.

The Clearing House administrative function rates for CLEC/ITC directory listings will apply in addition to the per listings rate.

The Compensation rate will be remitted to the ITCs or CLECs for the listings provided for DPLS services performed.

The Clearing House Administrative Function and Compensation rates apply on a per listings basis, as specified in J.2.e.(B)(1) and J.2.e.(B)(2) following.

e. Rates and Charges

The following rates apply:

	<u>Rates</u>	
(A) <u>DPLS</u>		
- Per Listing		
- Magnetic Tape/Cartridge	\$0.0305	(C)
- Daily Update		
- other media	ICB	
(B) <u>Clearing House for CLEC/ITC Listings</u>		
(1) <u>Administrative Function</u>		
- Per Listing	0.0173	
(2) <u>Compensation*</u>		
- Per Listing	0.0305	(C)

- * Each Independent Telephone Company (ITC) or Certified Local Exchange Carrier (CLEC) will be compensated at the above compensation rate for their listing data until such time as that ITC or CLEC receives its own approved compensation rate.

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New York Telephone Company

Preface
2nd Revised Page 2
Superseding 1st Revised Page 2

PREFACE

Statement of Company's Reservation of Objections and/or Adjustment Provisions

ITEM 5

The rates and changes issued August 21, 1998, reflect the Commission's Order of July 22, 1998 in Case Nos. 95-C-0657, 94-C-0095 and 91-C-1174, and are without waiver or prejudice to any rights or objections of New York Telephone Company with respect to such Order.

ITEM 6

The rates and changes issued October 2, 1998, reflect the Commission's Order of July 22, 1998 in Case Nos. 94-C-0095, 95-C-0657, 91-C-1174 and 96-C-0036 and are without waiver of, prejudice to, any rights or objections of New York Telephone Company with respect to such Order. These rates and changes related to Directory Database issues are being filed by the Company to comply with the requirements of the Order. The Company filed a Petition for Rehearing on August 28, 1998, seeking reconsideration and/or rehearing in this proceeding questioning the appropriateness of various provisions contained in the Commission's July 22, 1998 Order.

ITEM 7

The rates and changes issued January 19, 1999, reflect the Commission's Order of January 7, 1999 in Case Nos. 94-C-0095, 95-C-0657, 91-C-1174, 96-C-0036 and 90-C-0075 and are without waiver of, prejudice to, any rights or objectives of New York Telephone Company with respect to such Order.

(N)

Issued in compliance with Order of the Public Service Commission, dated January 7, 1999 in Case Nos. 94-C-0095, 95-C-0657, 91-C-1174, 96-C-0036 and 90-C-0075.

See PREFACE Item 7 for Statement of Company's Reservation of Objections.

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New York Telephone Company

Section 5

3rd Revised Page 74.3

Superseding 2nd Revised Page 74.3

NETWORK ELEMENTS

5. Unbundled Network Elements (Cont'd)

5.8 Directory Assistance and Operator Services (Cont'd)

5.8.1 Directory Assistance (DA) Services (Cont'd)

5.8.1.5 Direct Access to Directory Assistance (DADA) (Cont'd)

(B) Regulations

- (1) The TC is required to arrange for interconnection to the database. The Telephone Company will interconnect at any technically feasible point designated by the TC.
- (2) The Telephone Company will provide the TC with a user Guide for training its agents.

(C) Rates and Charges

Rates and Charges for DADA will be billed to the TC and are set forth in Section 5.8.8(A)(3) following.

5.8.1.6 Directory Assistance Listings Transfer (DALT)

(A) General

Directory Assistance Listings Transfer (DALT) provides TCs who request to offer operator Directory Assistance Service, with the capability to access the Telephone Company's New York directory listings database.

(B) Regulations

- (1) This service is for use by TCs in providing local exchange service in the State of New York.
- (2) DALT will include all directory listings in the database. Non-published listings will be provided only for the purpose of providing Directory Assistance Services.

The non-published information shall be provided subject to the TC's agreement to abide by the Privacy Principles in Case No. 90-C-0075 and with the agreement not to use the information for any purpose other than informing directory assistance callers that the customer's telephone number is non-published. Address information of non-published customers shall not be given out by TCs and shall be used for identification purposes only. Any violation of this provision or PSL section 91 (5) may result in loss of DA access and/or subject the violator to a penalty action under PSL section 25.

(C)

(N)

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NETWORK ELEMENTS

5. Unbundled Network Elements (Cont'd)

5.8 Directory Assistance and Operator Services (Cont'd)

5.8.1 Directory Assistance (DA) Services (Cont'd)

5.8.1.6 Directory Assistance Listings Transfer (DALT) (Cont'd)

(B) Regulations (Cont'd)

(3) The Telephone Company shall not be liable for any errors and omissions in the Telephone Company's listings, including the DL (Directory Listings) data provided to the TC. The TC shall protect, indemnify, save harmless and defend the Telephone Company from and against any and all loss, liability, damages and expense arising out of any demand, claim, suit or judgment for damages that may arise out of the Telephone Company's supplying of DL or TC's use of data contained therein irrespective of any fault, failure, or negligence on the part of the Telephone Company, including but not limited to claims made by consumers or other telephone companies(s) or ITC(s) relating to the provision, use or accuracy of DALT or DL data.

(4) The TC, its employees, representatives, or agents shall not use any methods of advertisement, solicitation, order form, billing invoice, stationary, promotional material or any artifice or device which would tend to create the impression or imply that any service provided by the TC, whether using DALT or not, was or is associated with or sponsored by the Telephone Company or any of its affiliates.

(5) The Directory Listing Database is and shall remain the property of the Telephone Company. The TC shall have no right to permit any other TC or person to use any information extracted therefrom without the express written consent of the Telephone Company, provided, however, the TC is authorized to make a general distribution of the directories that it published.

(C)

(6) Failure of the Telephone Company to enforce or insist upon compliance with any provision of this Tariff shall not constitute a waiver of its right to enforce future compliance with that provision or compliance with any other provision hereof.

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New York Telephone Company

Section 5

3rd Revised Page 74.5

Superseding 2nd Revised Page 74.5

NETWORK ELEMENTS

5. Unbundled Network Elements (Cont'd)

5.8 Directory Assistance and Operator Services (Cont'd)

5.8.1 Directory Assistance (DA) Services (Cont'd)

5.8.1.6 Directory Assistance Listings Transfer (DALT) (Cont'd)

(B) Regulations (Cont'd)

- (7) Failure to comply with the provisions of this Tariff shall result in termination of the service and the TC shall immediately return to the Telephone Company all copies of DALT data in its possession and shall make no further use of DALT data. The Telephone Company may suspend or cease the service when the TC fails to make timely payment of charges or when the Telephone Company has reasonable grounds to believe that the TC has been or is in violation of the prescribed use and application of the data or other terms of the Tariff. Upon TC termination of DALT, the TC shall return all copies of DALT or provide adequate written proof that the data has been removed from its systems and has been destroyed. (N)

- (8) The TC shall also be responsible to the Telephone Company for any and all loss, damage and expense the Telephone Company may suffer as a result of the publication by the TC, whether advertent or inadvertent, by the TC of the subscriber's non-published telephone number, including, but not limited to the cost incurred in changing the subscriber's telephone number.]

(C) Undertaking of the Telephone Company

- (1) The Telephone Company will provide directory listings, in electronic format, for its New York end-user customers.
- (2) The Telephone Company will provide the following DALT records:
- The Full load update which consists of the initial Directory Listing record. It will be provided via magnetic cartridge.
 - The Daily Updates which consist of all change activity made since the previous update. Each update will be provided via electronic file transfer.
- (3) Daily updates are provided at the same frequency and with the same basic content that the Telephone Company uses to update its own Directory Assistance database.
- (4) A DALT Technical Transfers Specification document will be made available to TCs in designing their DA database system.

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NETWORK ELEMENTS

5. Unbundled Network Elements (Cont'd)

5.8 Directory Assistance and Operator Services (Cont'd)

5.8.1 Directory Assistance (DA) Services (Cont'd)

5.8.1.6 Directory Assistance Listings Transfer (DALT) (Cont'd)

(D) Compensation to Other Telephone Companies

The Telephone Company will provide a Clearing House Administrative Function for the collection and remittance services associated with the sale of directory listings on behalf of independent telephone companies (ITCs) and TCs which provide to the Telephone Company the directory listings data for their New York local exchange service customers.

The Telephone Company will apply a Clearing House Administrative Function rate for ITC listings for collections and disbursement of compensation services performed.

The ITCs or TCs will be compensated for their listings included for DALT services performed.

The Clearing House Administrative function is only provided in connection with DALT, Directory Publishers Listings Service (DPLs) and Directory Assistance Listings Service (DALs) as specified in Sections 9.J.1. and 9.J.2. of the P.S.C. No. 900--Telephone Tariff.

(E) Rate Application

- (1) The Full Initial Extract Charge provides for the initial full load update and applies per transaction.
- (2) The Daily Update rate provides for the daily updates and applies on a monthly basis.
- (3)
- (4) The Clearing House Administrative Function rate for ITC listings applies on a per listings basis and is in addition to the Initial Extract nonrecurring charge and/or the Daily Updates monthly rate.
- (5) The Compensation rate will be remitted to the ITCs for their listings provided for the DALT services performed.

Rates and charges for DALT are set forth in 5.8.8 (A)(4) following.

Issued in compliance with Order of the Public Service Commission, dated January 7, 1999 in Case Nos. 94-C-0095, 95-C-0657, 91-C-1174, 96-C-0036 and 90-C-0075.

See PREFACE Item 7 for Statement of Company's Reservation of Objections.

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NETWORK ELEMENTS

5. Unbundled Network Elements (Cont'd)

5.8 Directory Assistance and Operator Services (Cont'd)

5.8.2 Basic Operator Services

Under this option, the Telephone Company will provide basic operator services, both automated and live, as described below.

5.8.2.1 Automated Operator Services (0+/Mechanized Operator Services)

This option enables the TC's end users to alternately bill their calls without live operator assistance. Alternate billing consists of calling card, collect, and bill to third number. This automated process occurs when the TC's end users dial 0+ and reach the Telephone Company's mechanized operator interface. The Telephone Company will return calls requiring completion to the TC's collocated facilities, where the TC must provision for applicable call completion services.

The Telephone Company will bill the TC for each 0+ mechanized call occurrence, as set forth in Section 5.8.8(B). At the TC's request, the Telephone Company will provide TC specific branding, which will be billed per occurrence in addition to the charges mentioned above.

5.8.2.2 Live Operator Services

This option enables the TC's end users to reach a live Telephone Company operator for assistance. This assistance includes the following call types: calling card, collect, bill to third number, person to person, emergency, busy line verification and interrupt, operator passthrough, and miscellaneous information. This live process occurs when the TC's end users dial 0- and reach the Telephone Company's operator services switch and live operator. The Telephone Company will return calls requiring completion to the TC's collocated facilities, where the TC must provision for applicable call completion services.

The Telephone Company will bill the TC for each 0- operator handled call, either on an occurrence basis or an operator work second basis, as set forth in Section 5.8.8(C). At the TC's request, the Telephone Company will provide TC specific branding, which will be billed per occurrence in addition to the charges mentioned above.

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NETWORK ELEMENTS

5. Unbundled Network Elements (Cont'd)5.8 Directory Assistance and Operator Services (Cont'd)5.8.2 Basic Operator Services (Cont'd)5.8.2.3 Additional Operator Services Features(a) Real Time Rating

Real Time Rating is a capability that enables a Telephone Company operator to provide the TC's standard tariff rates to the TC's end users, when the Telephone Company is providing operator services to that TC. The Telephone Company must be the Operator Services provider for the TC to utilize this service. This capability applies only to standard rates effective at the day and time of the inquiry, and for calls made from the actual line used by the end user to call the Telephone Company operator. Rates cannot be provided that account for optional calling plans or other discounts from standard tariff rates. The requesting TC must provide appropriate rate tables in the format defined by the Telephone Company. The requesting TC must provide an initial list of line numbers associated with the TC subscribers in a format to be defined by the Telephone Company. If a TC utilizing unbundled local switching as specified in 5.6 preceding, requests this service, Operator Service calls must be routed via dedicated trunks ports between the end office in which they have unbundled local switching ports and the TOPS switches.

Rate information/schedules, CIC and OCN must be provided to the Real Time Rating System Administrator (RTRSA) 60 days prior to the requested service date. Confirmation of receipt of the information and the service start date will be provided by the Telephone Company to the TC.

The rates are set forth in Section 5.8.8(D)(1) following.

(b) Automated Coin Toll Service

Automated Coin Toll Service (ACTS) provides the capability to process Intra-LATA toll calls originating from coin phones without operator intervention. After the caller dials a valid 1+IntraLATA Toll call from a coin phone, an automated system prompts the caller to deposit the proper amount of coins for call completion. If the caller fails to deposit the correct amount within the time threshold set by the Telephone Company, the call will default to a live operator for handling. If an insufficient amount is received within the established time threshold, a Telephone Company Operator will prompt the caller to deposit an additional amount. In the event a sufficient amount is not received the call will not be completed. Any overdeposit of coins will be credited toward any overtime. This option is only available with use of the Telephone Company's Operator Services. Rates and Charges for Automated Coin Toll Service will be billed to the TC and are set forth in Section 5.8.8(D)(2) following.

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NETWORK ELEMENTS

5. Unbundled Network Elements (Cont'd)5.8 Directory Assistance and Operator Services (Cont'd)5.8.3 Inward Operator Services: Wholesale Busy Line Verification and Interrupt

This option permits a TC that does not use the Telephone Company's Basic Operator Services to request Busy Line Verification and Interrupt on the Telephone Company's access lines. The TC's operator services provider must connect to the Telephone Company's operator services switch, as designated by the Telephone Company, through the TC's collocation facilities at that site. This connection requires Feature Group D (FGD) trunks.

At the request of the TC's operator services provider, a Telephone Company operator will attempt to determine the status of an exchange service line (e.g., in use, idle, or out of order). The Telephone Company operator will report the results to the TC operator services provider. If the Telephone Company operator reports the line to be in use, the TC operator services provider, per the TC end user's request, may ask the Telephone Company operator to interrupt the busy line. The Telephone Company operator will interrupt any existing conversation on the busy line and request termination of the call, so that the TC's end user may attempt to complete a call on the line.

The Telephone Company will respond to one telephone number per call on requests for Wholesale Busy Line Verification and Interrupt. This service cannot be provided on ported telephone numbers, telephone numbers which forward calls using Call Forwarding Variable service features, or telephone numbers which have Call Waiting provisioned on the line. The TC shall indemnify and hold the Telephone Company harmless against all claims that may arise from either party to the interrupted call or any other person.

The Telephone Company will bill the TC for each Wholesale Busy Line Verification or Interrupt call, either on an occurrence basis or on operator work second basis, as set forth in Section 5.8.8(E).

5.8.4 (Reserved for future use)5.8.5 (Reserved for future use)5.8.6 (Reserved for future use)5.8.7 (Reserved for future use)

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NETWORK ELEMENTS

5. Unbundled Network Elements (Cont'd)5.8 Directory Assistance and Operator Services (Cont'd)5.8.8 Rates and Charges(A) Directory Assistance ServicesPer Request(1) Directory Assistance

Each Request for Information per one telephone number, with NYT branding	\$0.326
Each Request for Information per one telephone number, with TC branding	0.326
Each Request for Information per one telephone number, without branding	0.302
Branding Surcharge per call (if applicable)	0.024

(2) Directory Assistance Call Completion
(DACC)

Each Request for Information per one telephone number, with NYT branding plus call completion	0.449
Each Request for Information per one telephone number, with TC branding plus call completion	0.449
Each Request for Information per one telephone number, without branding plus call completion	0.425
Call completion additive per call	0.123
Branding Surcharge per call (if applicable)	0.024

(3) Direct Access to Directory Assistance (DADA)Per Request

Each Search Request	0.0455*
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(4) Directory Assistance Listings Transfer (DALT)Monthly RatesNonrecurring Charges

(a) <u>Full Initial Extract</u>		\$83,341
(b) <u>Daily Updates</u>	\$3,866	

* Rates are filed pending final ruling by the Commission. The final rates will apply retroactively to the effective date of the Tariff.

See PREFACE Items 2 and 6 for Statement of Company's Reservation of Objections.

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